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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/608,026 | 06/30/2003 | Alan M. Zamore | 2003-5 | 7377 |

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EXAMINER

SERGEANT, RABON A

ART UNIT PAPER NUMBER

1711

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,026

Applicant(s)

ZAMORE, ALAN M.

Examiner

Rabon Sergeant

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-24, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 26-28 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Art Unit: 1711

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2006 has been entered.
2. The terminal disclaimer filed on September 7, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent issuing from U.S. application 10/688,292 has been reviewed and is accepted. The terminal disclaimer has been recorded.
3. Applicant's amendment of September 7, 2006 fails to comply with the provisions of 37 CFR 1.121, in that the specification has been amended with a replacement paragraph that fails to show the changes made to the paragraph and new claim 33 has been set forth that is improperly underlined. New claims must not be underlined.
4. In view of applicant's response, the prior art rejections with respect to the elected species, copoly(ether-ester-amide)polymer, have been withdrawn. In view of the amendments, the elected species is allowable over the prior art of record. Accordingly, search and examination of the application has been extended to the non-elected claimed species, nylon. For purposes of search and examination, the species, nylon, has been interpreted to encompass any polymer containing repeating amide linkages, including copolymers containing repeating amide linkages. The examiner has reviewed applicant's specification, and this interpretation is not contrary to any definition set forth by applicant. Furthermore, given the chemical similarity, the species of new claim 34 has been grouped with the nylon species. In view of the lack of disclosure

Art Unit: 1711

pertaining to the subject matter of claim 34 within the parent applications, the effective date of the subject matter of claim 33 is considered to be the actual filing date of the instant application, specifically, June 30, 2003.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neil et al. ('415 or '551) in view of Murray, III (US 2004/0092868 A1).

O'Neil et al. disclose the crosslinking of a thermoplastic polyamide copolymer by mixing the copolymer with an allylic crosslinking promoter and irradiating the mixture. Patentees

Art Unit: 1711

further disclose that the method and resulting product have medical applications. See abstracts. Though patentees teach a preference for the use of PEBAX type copolymers, it is not seen that patentees' teachings are limited to these copolymers, and the position is further taken that one of ordinary skill in the art would have expected the disclosed method to be suitable for use with other polyamide copolymers.

7. Though O'Neil et al. are silent regarding applicant's PEBA copolymer of claim 34, the position is taken that the use of such a copolymer in applications analogous to those of O'Neil et al., such as medical applications, were known at the time of invention. This position is supported by the teachings of Murray, III. Murray, III disclose at paragraph [0056] that polyamide or Grilamide, considered to correspond to applicant's PEBA copolymer, may be used to produce medical articles. Accordingly, the position is taken that it would have been obvious to modify compositions that correspond to applicant's PEBA copolymer by crosslinking them using the method of O'Neil et al. so as to obtain compositions suitable for medical applications having the improved characteristics taught by O'Neil et al.

8. Claims 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Richards et al. ('816).

Patentees disclose the radiation crosslinking of polyamide, wherein a polyamide is blended with an allylic monomer crosslinker and subjected to electron beam radiation. Patentees further disclose that the resulting compositions are useful for the production of such articles as tubing. See abstract and columns 3 and 4. The position is taken that the disclosed irradiation is sufficient to satisfy the requirements of claim 28. Furthermore, applicant's claimed increased tolerances are considered to be inherent features of the disclosed compositions.

Art Unit: 1711

9. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. ('316) or Tobias et al. ('658) or Lenard et al. ('589).

Patentees disclose the crosslinking of polyamide polymers by incorporating an ethylenically unsaturated monomer into the polymer and subjecting the resulting composition to sufficient energy to polymerize. See abstract; column 2, lines 40+; column 3, lines 16+; and column 8, lines 41-57 within Suzuki et al. See abstract; column 2, lines 39-68; and column 3 within Lenard et al. See abstract; column 2, lines 46-68; and columns 3 and 4 within Tobias et al. Patentees fail to disclose the use of gamma or electron beam radiation; however, the use of such energy sources to promote the reaction of unsaturated monomers within polymeric compositions was well-known and conventional at the time of invention; therefore, the position is taken that it would have been obvious to utilize these energy sources within the methods of the prior art.

10. Claims 12-22 are allowable with respect to the examined species of copoly(ether-ester-amide) polymer and nylon. The remaining species of these claims remain withdrawn from consideration.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (571) 272-1079.

R. Sergent
September 24, 2006


RABON SERGENT
PRIMARY EXAMINER